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9 N.Y.C.R.R. § 2204.6(d): "Family" as Used in New York City's Rent and Eviction Regulation Includes Nontraditional and Nonlegal Relationships

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mate injuries as a result of the accident.³¹

It is therefore submitted that the decision in *Robertson* established a potentially dangerous precedent by scrutinizing the legitimacy of a petitioner's excuse while ignoring the presence of actual knowledge by the municipality. Consequently, it is suggested that the validity of an excuse based on medical or physical incapacity should be examined only when the municipality demonstrates that it did not have timely notice of the essential facts of the underlying suit and that the delay substantially prejudices the ability of the municipality to defend against the claim on the merits. This approach would ensure that plaintiffs with otherwise legitimate claims would receive judgments based on the substantive merits of their lawsuit, while providing the municipality with the degree of protection intended by section 50-e.

Howard M. Miller

RENT CONTROL

9 N.Y.C.R.R. § 2204.6(d): "Family" as used in New York City's Rent and Eviction Regulation includes nontraditional and nonlegal relationships

Rent control laws were enacted in New York City in 1946 to protect tenants from abnormal and unwarranted rent increases resulting from an acute housing shortage,¹ and these laws continue to

³¹ See *id.* at 456-57, 536 N.Y.S. 2d at 70-71. "It never was the intention of the Legislature that this section [GML § 50-e] was to be used as a sword to defeat the rights of a person having a legitimate claim. Its purpose was as a shield to protect the municipality against spurious claims." *Hopkins v. East Syracuse Fire Dist.*, 49 Misc. 2d 197, 201, 267 N.Y.S.2d 61, 66 (Syracuse City Court 1966); See also *Annis*, 107 App. Div. 2d at 644, 485 N.Y.S.2d at 531 ([GML § 50-e] "should not operate as a device to defeat the rights of persons with legitimate claims").

¹ See N.Y. UNCONSOL. LAWS § 8581 (McKinney 1987). The Emergency Housing Rent Control Law provides in part:

The legislature hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons in the state of New York which emergency was created by war, the effects of war and the aftermath of hostilities; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in

play a major role in a market where supply is scarce and demand

rents; that there continues to exist an acute shortage of dwellings; that unless residential rents and evictions continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; that to prevent such perils to health, safety and welfare, preventive action by the legislature continues to be imperative.

Id. § 8581(1). New York State's rent control law is a replacement of federal regulation that was enacted during World War II to curb rent increases resulting from the housing shortage. See M. STEGMAN, *THE DYNAMICS OF RENTAL HOUSING IN NEW YORK CITY* 21-22 (1982). In 1962, the New York State legislature passed the Local Emergency Housing Rent Control Act, which separated the rent control in New York City from that in the remainder of New York State. See N.Y. UNCONSOL. LAWS §§ 8601, 8612 (McKinney 1987). New York City simultaneously enacted the City Rent and Rehabilitation Law for administration of rent control. See NEW YORK, N.Y., ADMIN. CODE ch. 3, § 401 (1987). Effective April 1, responsibility for administration of rent control transferred from New York City's Department of Housing Preservation and Development to the state-run Division of Housing and Community Renewal. See Ch. 403, §§ 27-30, [1983] N.Y. Laws 724-26 (McKinney). Rent control applies to certain dwelling units constructed prior to February 1, 1947. See [1985] 9 N.Y.C.R.R. § 2200.2(f)(8). The Emergency Housing Rent Control Law contains a sunset provision which has been extended twenty-five times. See N.Y. UNCONSOL. LAWS § 8581 (2) (McKinney 1987 & Supp. 1990).

Rent control must be distinguished from rent stabilization. In response to the continued spiraling increases in price in unregulated buildings, New York City enacted the Rent Stabilization Act of 1969, which was recodified in 1986. See NEW YORK, N.Y., ADMIN. CODE ch. 4, §§ 501-20 (1987); [1987] 9 N.Y.C.R.R. §§ 2520.1-2520.13. Rent stabilization is less burdensome to landlords than rent control, as it allows a larger return on an owner's investment. See *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 136-37, 261 N.E.2d 647, 654-55, 313 N.Y.S.2d 733, 742-43 (1970). Rent stabilization was designed to encourage construction of new units which would fall within the purview of the statute while maintaining affordable rents. See *Sullivan v. Brevard Assocs.* 66 N.Y.2d 489, 495-96, 488 N.E.2d 1208, 1211, 498 N.Y.S.2d 96, 99 (1985) (rent stabilization was a "compromise solution" to regulate rents of post-1947 housing and encourage construction "by allaying the fears of builders" that new buildings would be subjected to rent control); *8200 Realty Corp.*, 27 N.Y.2d at 136-37, 261 N.E.2d at 654-55, 313 N.Y.S.2d at 742-43 (rent stabilization designed to allow landlords sufficient profit and to encourage construction of more dwelling units while preventing runaway rent increases); see also Note, *All in the Family: Succession Rights and Rent Stabilized Apartments*, 53 BROOKLYN L. REV. 213, 218-19 (1987) (rent control and rent stabilization laws designed to protect tenants from landlords' advantage in a market of short supply, while enabling landlords to make a profit). But see Morris, *A Brief for Phasing Out Residential Controls*, N.Y.L.J., June 17, 1987, at 25, col. 1 (landlords' inability to raise rents has led to deterioration of older housing and stalled investors' desire to build new units, resulting in actual decrease in available housing).

Today in New York City, approximately 150,000 apartments are under rent control and 950,000 apartments under rent stabilization. See Dobkin, *Confiscating Reality: The Illusion of Controls in the Big Apple*, 54 BROOKLYN L. REV. 1249, 1255 (1989). More than 80% of New York City's rent controlled apartments have been decontrolled and replaced by less restrictive rent stabilized units during the last eighteen years. *Id.* at 1254-55. For an indepth analysis of rent control in New York City, see M. STEGMAN, *supra*. For an economic analysis of rent control, see Hirsch, *From "Food for Thought" to "Empirical Evidence" About Consequences of Landlord-Tenant Laws*, 69 CORNELL L. REV. 604 (1984); Weitzman, *Economics and Rent Regulation: A Call for a New Perspective*, 13 N.Y.U. REV. L. & SOC. CHANGE 975

is high.² To ensure the efficacy of rent control, New York City enacted the Rent and Eviction Regulations limiting, *inter alia*, a landlord's ability to evict tenants.³ Section 2204.6(d) of the regulations allows family members not listed on a lease to continue to occupy the premises and obtain renewal leases if they resided with the deceased tenant of record.⁴ The regulations, however, fail to define the term "family."⁵ Recently, in *Braschi v. Stahl Associates*

(1984-85).

² See Keating, *Commentary on Rent Control and the Theory of Efficient Regulation*, 54 BROOKLYN L. REV. 1223, 1224 (1989); see also *Herzog v. Joy*, 74 App. Div. 2d 372, 374, 428 N.Y.S.2d 1, 2 (1st Dep't 1980) (recognizing continuing housing shortage in New York City), *aff'd*, 53 N.Y.2d 821, 422 N.E.2d 582, 439 N.Y.S.2d 922 (1981); Berger, *Home is Where the Heart is: A Brief Reply to Professor Epstein*, 54 BROOKLYN L. REV. 1239, 1240 (1989) (modern rent control essential to enable people to live free from fear of unaffordable rent measures or unjustified eviction); Dobkin, *supra* note 1, at 1249 (rent control laws essential to protect tenants from being priced out of housing market). Controls are needed more now than ever. See Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835, 1835 (1988) (lack of affordable housing drives middle-income families out of cities throughout America, leaving only the very poor and wealthy); New York State Temporary Commission on Rental Housing Report to the Governor of 1980, at 1-3(1980) (public emergency requiring continued regulation of residential rents exists because of shortage in housing accommodations).

More than 200 cities, including Boston, Los Angeles, New York, San Francisco and Washington, D.C., have enacted rent control statutes which affect a substantial percentage of the country's multifamily rental units. See Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL, L. REV. 517, 527 (1984).

³ [1985] 9 N.Y.C.R.R. §§ 2204.1-2204.9. See generally, Rabin, *supra* note 2, at 535 (most jurisdictions' rent controls limit landlord's ability to evict). A landlord is prohibited from evicting a tenant from a rent controlled apartment even though the tenant has no lease or the lease has expired. [1985] 9 N.Y.C.R.R. § 2204.1(a); see, e.g., *Lopez v. Mirabel*, 127 App. Div. 2d 771, 771, 512 N.Y.S.2d 164, 165 (2d Dep't 1987) (landlord could not evict tenant in possession with no lease because of more than twenty-year tenancy).

Upon authorization from a court of competent jurisdiction, a landlord may remove a tenant for cause, such as nonpayment of rent, violation of a substantial obligation of the tenancy, or utilization of the housing accommodations for illegal or immoral purposes. [1985] 9 N.Y.C.R.R. § 2204.2(a). In order to obtain authorization to evict a tenant on grounds other than those enumerated in the regulations, such as for alteration or demolition of the premises, the landlord must provide a tenant with suitable relocation and may be required to pay a tenant a stipend as well as all relocation expenses. See *id.* § 2204.4.

⁴ [1985] 9 N.Y.C.R.R. § 2204.6(d). Subsection (d) provides: "No occupant of housing accommodations shall be evicted under this section where the occupant is either the surviving spouse of the deceased tenant or some other member of the *deceased tenant's family who has been living with the tenant.*" *Id.* (emphasis added). The statute protects occupants if the tenant of record dies or abandons the premises provided that the occupant is a family member and lived with the tenant of record prior to death or abandonment. See *829 Seventh Ave. Co. v. Reider*, 67 N.Y.2d 930, 932, 493 N.E.2d 939, 941, 502 N.Y.S.2d 715, 716 (1986) (required to have lived with tenant of record as a family unit); *Herzog*, 74 App. Div. 2d at 376, 428 N.Y.S.2d at 4 (protection extended provided occupant lived with tenant prior to tenant's abandonment).

⁵ See [1985] 9 N.Y.C.R.R. § 22200.2 (definitions section). The regulations do, however,

Co.,⁶ the New York Court of Appeals held that the word "family," as used in section 2204.6(d), extends beyond its traditional connotation and includes people who function as a family unit although not legally related.⁷

In *Braschi*, the appellant, a tenant who was in a long-term interdependent relationship with the deceased tenant of record, upon being served with a direction to vacate their rent controlled apartment, brought an action for a permanent injunction and a declaration of entitlement to occupy the apartment.⁸ The appellant further moved for a preliminary injunction⁹ pending the court's determination of whether the appellant was a member of the deceased tenant's "family" within the meaning of section 2204.6(d).¹⁰ The Supreme Court, New York County, granted the preliminary injunction, holding that "family" should be defined functionally and that the appellant had established the requisite clear likelihood of success on the merits.¹¹ The Appellate Division, First Department, reversed, concluding that the noneviction protection of section 2204.6(d) applied "only to 'family members within traditional, legally recognized familial relationships.'"¹²

On appeal, the New York Court of Appeals reinstated the pre-

define the term "tenant" to include "[a] tenant, subtenant, lessee, sublessee or other person entitled to the possession or to the use or occupancy of any housing accommodation." *Id.* § 2200.2(o). In contrast, the New York City Rent Stabilization Code defined a "family member" as "[a] husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant or permanent tenant." [1987] 9 N.Y.C.R.R. § 2520.6(o). On November 8, 1989, New York State housing officials extended the definition of "family" contained in the Rent Stabilization Code to provide protection to nontraditional family members. N.Y. Times, Nov. 9, 1989, at B1, col. 1.

⁶ 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989).

⁷ See *id.* at 211, 543 N.E.2d at 53-54, 544 N.Y.S.2d at 788-89.

⁸ *Id.* at 206, 543 N.E.2d at 50-51, 544 N.Y.S.2d at 785-86.

⁹ *Id.* at 206-07, 543 N.E.2d at 51, 544 N.Y.S.2d at 786. A preliminary injunction is granted when it appears that the moving party will suffer irreparable harm if the injunction is not granted, and a strong likelihood of success on the merits has been demonstrated. CPLR § 6301. See *Grant Co. v. Srogi*, 52 N.Y.2d 496, 517, 420 N.E.2d 953, 963, 438 N.Y.S.2d 761, 771 (1981) (preliminary injunction may lie when claimant has shown sufficient probability of success on the merits, irreparable injury that would result from denying injunction, and equitable balance in claimant's favor); *People ex rel. Bennett v. Laman*, 277 N.Y. 368, 376, 14 N.E.2d 439, 442 (1938) (granting or denying relief is within court's discretion).

¹⁰ *Braschi*, 74 N.Y.2d at 206, 543 N.E.2d at 51, 544 N.Y.S.2d at 786.

¹¹ *Id.*

¹² *Braschi v. Stahl Assoc. Co.*, 143 App. Div. 2d 44, 45, 531 N.Y.S.2d 562, 563 (1st Dep't 1988), *rev'd*, 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989).

liminary injunction.¹³ Writing for the plurality,¹⁴ Judge Titone stated that when a term in a statute has not been defined, the court should employ a construction that advances the purpose of the statute, promotes public good, and avoids hardships that the statute was designed to prevent.¹⁵ The court enumerated several objective criteria for determining the existence of a familial relationship between the decedent and the appellant.¹⁶ Judge Titone concluded that construing "family" to include nontraditional relationships was consistent with the "competing purposes of the rent control laws: the protection of individuals from sudden dislocation and the gradual transition to a free market system."¹⁷

Judge Bellacosa, in a concurring opinion, asserted that the court could have reversed upon narrower grounds, without expanding the definition of the word "family," by recognizing the anti-eviction policy of rent control as the paramount

¹³ *Braschi*, 74 N.Y.2d at 201, 543 N.E.2d at 49, 544 N.Y.S.2d at 784. The court noted that although normally the determination of a request for a preliminary injunction lies within the discretion of the trial judge, the court was empowered to hear the appeal because "the Appellate Division's determination rested solely on its conclusion that as a matter of law appellant could not seek noneviction protection because of the absence of a 'legally recognized' relationship with [the deceased tenant of record]." *Id.* at 207, 543 N.E.2d at 51, 544 N.Y.S.2d at 786.

¹⁴ *See id.* at 223, 543 N.E.2d at 61, 544 N.Y.S.2d at 796. Judges Kaye and Alexander concurred with Judge Titone, Judge Bellacosa concurred in a separate opinion, Judge Hancock, Jr. concurred with Judge Simons' dissent, and Chief Judge Wachtler took no part in the decision. *Id.*

¹⁵ *Id.* at 207-08, 543 N.E.2d at 51-52, 544 N.Y.S.2d at 786-87; *see United States v. Whitridge*, 197 U.S. 135, 143 (1905) (when searching for meaning of particular word, purpose of statute is more important than rules of grammar or logic); *People v. Ryan*, 274 N.Y. 149, 152, 8 N.E.2d 313, 315 (1937) (fundamental rule is that legislative intent governs in determining meaning of word in statute).

The *Braschi* court reasoned that the rent control statute was a remedial statute designed to promote public good and therefore should be broadly interpreted in a manner that advances the public good. *Braschi*, 74 N.Y.2d at 208, 543 N.E.2d at 52, 544 N.Y.S.2d at 787. In addition, Judge Titone dismissed the respondent's assertion that "family" should be defined by New York State's intestacy laws, holding that the noneviction provisions of the rent control regulations were not designed to accommodate succession of real property but to protect a "certain class of occupants from the sudden loss of their homes." *Id.* at 210, 543 N.E.2d at 53, 544 N.Y.S.2d at 788.

¹⁶ *Id.* at 212-13, 543 N.E.2d at 55, 544 N.Y.S.2d at 790. Judge Titone listed a number of factors, "including the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services." *Id.* The court added that these criteria should be used for guidance and that each examination must be based upon the relationship when viewed as a whole. *Id.* at 213, 543 N.E.2d at 55, 544 N.Y.S.2d at 790.

¹⁷ *Id.* at 212, 543 N.E.2d at 54, 544 N.Y.S.2d at 789.

consideration.¹⁸

In a vigorous dissent, Judge Simons protested that the court's holding violated the state's ultimate goal of releasing units from rent control, misconstrued the plain meaning of the word "family," and created an unworkable test subject to abuse.¹⁹

It is submitted that the *Braschi* court acted consistently with the scheme of rent control²⁰ by properly interpreting "family" in a manner that effectuates the underlying statutory purpose: protecting occupants from "uncertainty, hardship, and dislocation."²¹ While the dissent argued that the court should facilitate the state's goal of returning rent controlled units to a free market,²² it is sub-

¹⁸ *Id.* at 214-16, 543 N.E.2d at 55-57, 544 N.Y.S.2d at 790-92 (Bellacosa, J., concurring). Judge Bellacosa noted that the plurality's opinion went beyond the court's judicial function by defining criteria to determine whether a party is "family" within the meaning of the rent control regulations, an act reserved for the legislature. *Id.* (Bellacosa, J., concurring).

¹⁹ *Id.* at 216-23, 543 N.E.2d at 57-61, 544 N.Y.S.2d at 792-96 (Simons, J., dissenting). Judge Simons based much of his dissent on the statutory scheme of the New York City Rent Stabilization Law. *See id.* at 216-18, 220-23, 543 N.E.2d at 57-61, 544 N.Y.S.2d at 792, 794-96 (Simons, J., dissenting). Judge Simons asserted that because rent stabilization, which is the replacement system for rent control, specifically denied protection to the appellant and because rent control did not specifically provide protection for the appellant, the appellant was not entitled to receive the benefits of rent control. *Id.* (Simons, J., dissenting).

²⁰ Because section 2204.6(d) fails to define expressly the term "family," the court must interpret its meaning. *See* New York State Bankers Ass'n v. Albright, 38 N.Y.2d 430, 437, 343 N.E.2d 735, 738-39, 381 N.Y.S.2d 17, 20-21 (1975) (court should interpret words in manner consistent with statute's purpose); *People v. Ryan*, 274 N.Y. 149, 152, 8 N.E.2d 313, 315 (1937) ("Literal meanings of words [should] not . . . 'defeat the general purpose and manifest policy intended to be promoted'"); N.Y. STAT. LAW § 231 (McKinney 1971 & Supp. 1989) (words to be "determined in accordance with the intent of the lawmakers"). Further, the remedial nature of the City's Rent and Eviction Regulations demands a liberal construction "to spread their beneficial result as widely as possible." N.Y. STAT. LAW § 321 (McKinney 1971 & Supp. 1989) (remedial statutes should be liberally construed). For a discussion of statutory construction, see generally Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527 (1947).

Further support for the *Braschi* court's holding can be derived from a statutory analysis of the City's Rent and Eviction Regulations. The legislature used three classifications for "family." *See* N.Y. UNCONSOL. LAWS § 2200.2(14)-(15) (McKinney 1987 & Supp. 1989) ("related person" limited to tenant and tenant's parent, grandparent, child, sibling, or spouse); *Id.* § 2202.6 ("immediate family"); *Id.* § 2204.5(a) ("immediate family" limited to "son, daughter, grandson, granddaughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law, grandfather, grandmother, stepfather or stepmother"). It is submitted that had the legislature intended to limit the term "family" in § 2204.6(d) it would have done so expressly.

²¹ N.Y. UNCONSOL. LAW § 8602 (McKinney 1987). It has been asserted that rent control also protects a tenant's interest in establishing both a home and a community identity. *See* Berger, *supra* note 2, at 1240-41.

²² *Braschi*, 74 N.Y.2d at 217, 543 N.E.2d at 57, 544 N.Y.S.2d at 792 (Simons, J., dissenting).

mitted that the *Braschi* court furthered the legislative purpose of providing extensive protection to occupants of rent controlled apartments.²³ The *Braschi* court's holding is also consistent with prior lower court decisions extending the protection of rent control to tenants not explicitly provided for in the statute.²⁴ Further, the holding is congruent with the recent Division of Housing and Community Renewal ("DHCR") ruling that specifically affords protection from eviction to unrelated persons under the Rent Stabilization Code.²⁵

The *Braschi* court articulated several factors for determining whether the occupant's relationship with the deceased tenant of record entitles him or her to noneviction protection.²⁶ These included the length of time the parties lived together, the parties' sharing of bank accounts and credit cards, and the parties' holding themselves out to society as a family.²⁷ In its recent amendment to

²³ The Rent and Rehabilitation Law of the City of New York contains detailed provisions regulating which units are to be controlled, the conditions under which noncontrolled units may become controlled, the requirements that must be met before a rent increase will issue, provisions allowing for rent decreases, the requirement that the landlord provide essential services, and criminal and civil penalties against a landlord for violation of this law. See [1987] 9 N.Y.C.R.R. §§ 2200.2(e)-(f), 2201.3(2), 2202.16, 2205.1, 2206.1, 2206.4, 2206.8. These provisions have been implemented to ensure that "residential rents and evictions continue to be regulated and controlled . . . [to avoid] serious threats to the public health, safety and general welfare." N.Y. UNCONSOL. LAW § 8602 (McKinney 1987 & Supp. 1989).

²⁴ See, e.g., *Herzog v. Joy*, 74 App. Div. 2d 372, 376, 428 N.Y.S.2d 1, 4 (1st Dep't 1980) (court extended noneviction protection to occupants though tenant of record voluntarily abandoned apartment), *aff'd*, 53 N.Y.2d 821, 422 N.E.2d 582, 439 N.Y.S.2d 922 (1981); *Vetri v. Joy*, 55 App. Div. 2d 529, 530, 389 N.Y.S.2d 105, 106 (1st Dep't 1976) (rent control protected an occupant not a member of tenant's immediate family), *aff'd*, 43 N.Y.2d 660, 371 N.E.2d 534, 400 N.Y.S.2d 816 (1977); *Budhu v. Grasso*, 125 Misc. 2d 284, 290, 479 N.Y.S.2d 303, 308 (N.Y.C. Civ. Ct. Queens County 1984) (amendment of City's Rent and Eviction Regulation denies landlord's right to recover possession of rent controlled apartment for personal use where tenant was sixty-two years or older, occupied premises for at least twenty years, or is physically disabled); *Garone v. Joy*, 107 Misc. 2d 1094, 1096-97, 436 N.Y.S.2d 697, 699 (Sup. Ct. New York County 1981) (rent control protection was extended to protect ex-superintendent of building though apartment was exempt from control during employment period).

²⁵ See *New York Housing Officials Redefine Family to Block Evictions*, N.Y. Times, Nov. 9, 1989, at B1, col. 1. The Commissioner of the DHCR stated that the emergency action was necessary to "assure that nontraditional family members of tenants, especially those most vulnerable such as the elderly, disabled and persons infected with the AIDS virus, are not unfairly subject to eviction." *Id.* at B1, col. 1. In addition to affording the tenant protection from eviction should the tenant of record die, the regulations have been expanded to provide protection where the tenant of record voluntarily vacates the premises. *Id.* at B7, col. 2.

²⁶ *Braschi*, 74 N.Y.2d at 212-13, 543 N.E.2d at 55, 544 N.Y.S.2d at 790.

²⁷ *Id.* Judge Titone emphasized that "the totality of the relationship" is the key factor

the regulations governing rent stabilization, the DHCR implemented a modified version of the criteria enumerated in *Braschi*.²⁸ Contrary to the dissent's opinion, such factors can be objectively verified by independent sources, such as title of bank accounts, beneficiaries of wills and insurance, and vacation records. Furthermore, San Francisco has adopted methods which New York City could use to allay the fear that the *Braschi* decision will result in abuse of the City's rent control laws.²⁹ It appears feasible to establish a registration system, administered by the DHCR, which would allow parties claiming protection under section 2204.6(d) to apply for certification of their familial relationship.³⁰ After a hearing, which the landlord would have the opportunity to attend, the DHCR would issue or deny the claimant such a certificate.³¹ Pursuant to the guidelines of administrative law, the existence of a rational basis for the administrative ruling would make the decision of the DHCR final and legally binding on both the tenant and the landlord.³² Such a certificate system would aid landlords by providing them with knowledge of the number of individuals occupying their apartments who would qualify as "family" under section 2204.6(d).

in determining whether the tenant is entitled to protection. *Id.* at 213, 543 N.E.2d at 55, 544 N.Y.S.2d at 790.

²⁸ See *New York Housing Officials Redefine Family to Block Evictions*, N.Y. Times, Nov. 9, 1989, at B7, col. 1. The DHCR stated that a person unrelated to the deceased may remain in a rent stabilized apartment if he meets two requirements: 1) he has lived with the tenant for two years (one year for the elderly or disabled), and 2) he had emotional and financial interdependence with the tenant. *Id.*

²⁹ See Anderson, *New Nuclear Family*, 75 A.B.A. J. 20, 20 (Oct. 1989). San Francisco's Board of Supervisors passed an ordinance giving city employees with unmarried partners the right to obtain marital status benefits and to register with the city. *Id.*

³⁰ The legislature has the authority to delegate to the DHCR the "power to determine facts and conditions on which the operation of a law depends." N.Y. STAT. LAW § 3(a) (McKinney 1971 & Supp. 1989). The state Administrative Procedure Act provides procedures allowing the administrator's decision in an adjudicatory proceeding to bind the parties. See N.Y.A.P.A. §§ 301-07 (McKinney 1984 & Supp. 1990).

³¹ See N.Y. UNCONSOL. LAWS § 8607 (McKinney 1987 & Supp. 1989). The DHCR is "authorized to . . . conduct such hearings . . . as it deems necessary or proper in prescribing an . . . order." *Id.* "Any person who is aggrieved by the final determination . . . may . . . file a petition with the supreme court." *Id.* § 8608.

³² See *Fazio v. Joy*, 58 N.Y.2d 674, 675, 444 N.E.2d 990, 991, 458 N.Y.S.2d 526, 527 (1982) (standard of review of agency determination on eviction is rational basis test); *Colton v. Berman*, 21 N.Y.2d 322, 329, 234 N.E.2d 679, 684, 287 N.Y.S.2d 647, 651 (1967) (review is to ensure agency decision is not arbitrary or capricious); *Menro Realty Corp. v. Gabel*, 235 N.Y.S.2d 806, 808 (Sup. Ct. New York County 1962) (court cannot substitute its judgment for administrative decision if such has rational basis).

The *Braschi* court interpreted and applied section 2204.6(d) in a prudent manner that accords with the realities of contemporary family life.³³ It is suggested that the *Braschi* court's recognition that a family can consist of more than blood relatives or sanctioned legal relationships is consistent with the nation's path toward true equality,³⁴ and soundly encourages society's acceptance of "nontraditional" lifestyles.³⁵ The *Braschi* court's holding, therefore, should be adopted fully, and applied in other areas involving the concept of "family."³⁶

Mark A. Ricca

³³ See *Developments in the Law—Sexual Orientation and the Law*, 102 HARV. L. REV. 1058, 1603-04 (1989). The modern definition of family is much broader than the traditional notion "of an income-earning male and a housewife." *Id.* at 1603; see also *Brown v. Board of Ed.*, 347 U.S. 483, 492-93 (1954) (courts must consider recent developments in American life). The *Braschi* court's holding comports with family arrangements in society today. Telephone interview with housing attorney Michael Finder, partner at the New York City law firm of Levenson, Finder, Novick & Kerrigan.

³⁴ See J. FOSTER & M. SEGERS, *ELUSIVE EQUALITY: LIBERALISM, AFFIRMATIVE ACTION, AND SOCIAL CHANGE*, 4-6 (1983). Early America, believing it fostered equality for all actually fell far short of this noble goal "because women, blacks, Native Americans, apprentices, and indentured servants lived lives of necessity and inferiority." *Id.* at 4. Through affirmative action programs, conceived by the Johnson administration, and adopted by subsequent administrations, Congress and the courts, America exerted clear efforts to ensure that all people have "equal opportunity without regard to race, sex, color, creed, religion, or national origin." *Id.* at 5; see, e.g., *Califano v. Webster*, 430 U.S. 313, 320 (1977) (court supported legislation designed to compensate women for prior discrimination); see also *Brown*, 347 U.S. at 492-93 (separate education facilities for blacks and whites inherently unequal and therefore discriminatory in violation of the fourteenth amendment).

³⁵ See *In re Adult Anonymous II*, 88 App. Div. 2d 30, 35, 452 N.Y.S.2d 198, 201 (1st Dep't 1982) (realities of modern life demand recognition of nontraditional families); *Zimmerman v. Burton*, 107 Misc. 2d 401, 403, 434 N.Y.S.2d 127, 128 (N.Y.C. Civ. Ct. N.Y. County 1980) ("law must keep abreast of changing moral standards"). Other jurisdictions have acknowledged that "family" may include more than persons related solely by blood, or law. See, e.g., *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 134, 610 P.2d 436, 442, 164 Cal. Rptr. 539, 545 (1980) (acknowledging alternate relationships which qualify as "family"); *Charter Township of Delta v. Dinolfo*, 419 Mich. 253, 263, 351 N.W.2d 831, 837 (1984) (legislature has the power to define "family"); *State v. Baker*, 81 N.J. 99, 107, 405 A.2d 368, 372 (1979) (definition of "family" not based on biological or legal bonds).

³⁶ Recently, the rationale adopted by the *Braschi* court was followed to protect a handicapped teenager from eviction. See *Rayen Dev. Corp. v. Titus*, N.Y.L.J., Oct. 20, 1989, at 21, col. 3 (Sup. Ct. App. T. 1st Dep't 1989). Although the teenager was never formally adopted by the deceased tenant of record, the court determined that because the child received emotional and financial support by the tenant of record she was deserving of protection. *Id.* Similarly, the New Jersey Supreme Court recently applied a broad interpretation to the term "family" by upholding the right of ten college students to live in a single-family house because they "demonstrated the 'generic character' of a family." N.Y. Times, Feb. 1, 1990, at B6, col. 1.